Supreme Court of Illinois.

MILLET v. THE PEOPLE.

The words "due process of law," in the constitutional provision "that no person shall be deprived of life, liberty or property without due process of law," are synonymous with the words "the law of the land," which mean general public law, binding upon all the members of the community, under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals.

Sect. 29, art. 4, of the constitution of Illinois, which enjoins legislation in the interest of miners, means legislation for the personal safety of miners, and relates only to the enactment of police regulations to promote that end.

So far as the owner or operator of a mine shall contract for the mining of coal, or the selling of coal by weight, there is no constitutional objection to the statutes imposing upon him the duty of procuring scales for that purpose; but when he has no necessity for the use of scales in these respects, he cannot be compelled to keep and use them.

So much of the act of 1885, amendatory of the act of 1883, providing for the weighing of coal at mines, as provides that all contracts for the mining of coal, in which the weighing of the coal, as provided for in that act, shall be dispensed with, shall be null and void, is in violation of the constitution.

It is not competent for the legislature, under the constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make. Such legislation cannot be sustained as an exercise of the police power.

The legislature has not the power to require the owners and operators of coal mines in this state to furnish scales, and employ a person to use them and keep books of entries of weights, for the benefit or information of the public, without first making compensation to the owners, that being tantamount to an appropriation to public use of private property, which is the cost of the scales, and a clerk to keep the books.

APPEAL from the Circuit Court of St. Clair county.

Wilderman & Hamill, for the appellant.

George Hunt, Attorney-General, and *James M. Dill*, for the People.

The opinion of the court was delivered by

SCHOLFIELD, J.—The defendant was indicted and convicted of failing, as the agent of the owner of a certain coal mine, to cause to be furnished and placed upon the railroad track, adjacent to the coal mine, a track scale of standard measure, upon which to weigh the coal hoisted from the mine, as provided by section 1 of "An

act to provide for the weighing of coal at the mines," approved June 14th 1883, and the several sections of the act to amend sections 2, 3 and 4 of that act, approved June 29th 1885.

We held in *Jones* v. *The People*, 110 Ill. 590, that it was competent to show, in defence of a person indicted under the same section before the approval of the amendatory act of June 29th 1885, that at the time the act took effect, and long prior thereto, the corporation in that case owning and operating the coal mine had a contract with all the men employed to mine coal in that mine, during that period, to receive, as the wages for their labor, from said company, the sum of forty cents per box for each box of coal mined and taken from said mine; that all the persons employed in the mine to mine coal for said company, had always been and were then perfectly satisfied to work under said contract, and that they did not want the coal taken from the mine weighed, as a basis upon which to compute their wages, &c. It was, in considering this question, among other things then said: "Although section 2 does provide that the weight determined by weighing on the scales furnished shall be considered the basis upon which the wages of persons mining coal shall be computed, we do not regard this as requiring that in all contracts for the mining of coal, the wages of the miners must be computed upon the basis of the weight of the coal mined. That would be a quite arbitrary provision—seemingly an undue interference with men's rights of making contracts—and we cannot ascribe to the legislature the making of such an enactment unless it be plainly declared, which is not done in this case."

The second section of the amendatory act, approved June 29th 1885, requires that all coal produced in this state shall be weighed on the scales, as provided in section 1 of the act approved June 14th 1883, and that a correct record of the same shall be kept, in a well bound book furnished by the owner, agent or operator of such mine for that purpose, by a competent person, at the expense of such owner, agent or operator—said record to be subject to the inspection (at all reasonable business hours) of the miner, operator, carrier, landowner, adjacent landowner, members of the Bureau of Labor Statistics, mine inspectors, and all others interested. Section 3 provides that it shall be lawful for the miners employed in any coal mine or colliery in this state, to furnish a check weigher, at their own expense, whose duty it shall be to balance said scales, and see that the coal is properly weighed, and keep a correct

account of the same; and for this purpose he shall have access, at all times, to the beam box of said scales while such weighing is being performed. The fourth section provides, that a fine, or fine and imprisonment, as prescribed, shall be imposed on any owner or agent operating a coal mine, failing to comply with these provisions. And another section provides that all contracts for the mining of coal, in which the weighing of the coal, as provided for in that act, shall be dispensed with, shall be null and void.

The court, at the instance of the People, instructed the jury, that since the first day of July 1885, the law prohibits the making of any contracts between the operators of coal mines and the miners, in which the weighing of coal as provided by law, is sought to be avoided, and the court refused to instruct the jury "that if they believe from the evidence, that the company for which the defendant is working does not sell or offer to sell, coal by weight at its mine at which defendant is employed, and that it has contracts with all the men employed in its mine to mine coal at twenty-five or twenty cents per box, then the jury should find the defendant not guilty."

There was evidence before the jury on which to predicate this instruction. The question is thus presented, whether it is competent for the General Assembly to single out owners and operators of coal mines as a distinct class, and provide that they shall bear burdens not imposed on other owners of property or employers of laborers, and prohibit them from making contracts which it is competent for other owners of property or employers of laborers to make.

It is declared in section 2, article 2, of our constitution, that "no person shall be deprived of life, liberty or property without due process of law." And section 13 of the same article provides that private property shall not be taken or damaged for public use without just compensation. The words "due process of law" in this connection, are held to be synonymous with the words "the law of the land." Cooley on Const. Lim. (1st ed.) pp. 352–3. And this means general public law, binding upon all the members of the community, under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals: *Jones* v. *Reynolds*, 2 Texas 251; see, also, *Wyenheimer* v. *The People*, 13 N. Y. 432; *Vanzant* v. *Waddell*, 2 Yerger 269.

"Every one, "says Cooley (Const. Lim., 1st ed., page 391), "has

a right to demand that he be governed by general rules, and a special statute that singles his case out as one to be regulated by a different law from that which is applied in all similar cases, would not be legitimate legislation, but an arbitrary mandate, unrecognised in free government. Mr. Locke has said of those who made the laws: 'They are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor—for the favorite at court and the countryman at plough.' And this may justly be said to have become a maxim in the law by which may be tested the authority and binding force of legislative enactments." And again, the same authority says (p. 393): "The doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges or legal capacities in a manner before unknown to the law, could be sustaincd. Distinctions in these respects should be based upon some reason which renders them important—like the want of capacity in infants and insane persons; but if the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bonds of legislative power, even if it did not come in conflict with express constitutional provisions. The man or the class forbidden the acquisition or enjoyment of property in the manner permitted to the community at large, would be deprived of *liberty* in particulars of primary importance to his or their pursuit of happiness." See, also, *Budd* v. *The State*, 3 Humph. 483, where one of the sections of the act incorporating the Union Bank, which provided that if any of the officers, agents or servants of that bank should embezzle the funds of the bank, or make false entries, they should be guilty of felony, was held unconstitutional, because it did not apply generally to officers, agents or servants of banks committing like offences. And *Wally's Heirs* v. *Kennedy*, 2 Yerg. 554, where an act authorizing the court to dismiss Indian reservation cases where prosecuted for the use of another, was held unconstitutional. In the last case the court said: "The rights of every individual must stand or fall by the same rule or *law* that governs every other member of the body politic, or land, under similar circumstances; and every partial or private law which

directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, the mass of the community and those who made the law, by another; whereas a like general law, affecting the whole community equally, could not have been passed." On the like principle is, also, *The People* v. *Marx*, 99 N. Y. 377.

What is there in the condition or situation of the laborer in the mine, to disqualify him from contracting in regard to the price of his labor, or in regard to the mode of ascertaining the price? And why should the owner of the mine, or the agent in control of the mine, not be allowed to contract in respect to matters as to which all other property owners and agents may contract? Undoubtedly, if these sections fall within the police power, they may be maintained on that ground; but it is quite obvious that they do not. Their requirements have no tendency to insure the personal safety of the miner, or to protect his property, or the property of others. They do not meet Dwarris' definition of police regulations. They do not have reference to the comfort, the safety, or the welfare of society: Potter's Dwarris on Statutes 458 In *Austin* v. *Murray*, 16 Pick. 221, it was said: "The law will not allow the rights of property to be invaded under the guise of a police regulation, for the promotion of health, when it is manifest that such is not the object and purpose of the regulation." See, also, to like effect, the language of COLT, J., in *Watertown* v. *Mayo*, 109 Mass. 315, and the opinion of the court and cases referred to in *Matter of Application of Jacobs*, 98 N. Y. 109, *et seq.*, and *The People* v. *Marx*, *supra*.

But it is suggested in argument, that one purpose of the sections is to furnish needful information to the public. If that be so, then, under section 13, article 2, *supra*, there must first be made compensation to the owner of the property thus to be devoted to public use; for it must be too apparent to need argument in its support, that to compel the purchasing of scales, and the employing of a person to use them, for the benefit of the public, is to appropriate the private property,—*i. e.*, the money which this will cost, —to public use: *Morse* v. *Stoeker*, 1 Allen 150; *State* v. *Glenn*, 7 Jones' L. 321.

The main reliance of the counsel representing the state, to sus-

tain the ruling below, seems, however, to be on the ground that mining for coal is affected with a public use, so that it may be regulated by law, like public warehouses, as held in *Munn* v. *Illinois* 94 U. S. (4 Otto) 113. It cannot be claimed that mining for coal was, by the common law, affected with a public use, and therefore specially regulated by law, like the business of inn-keepers, common carriers, millers, &c.; and, in our opinion, it is not like the business of public warehousing, within the principle controlling such classes of business. The public are not compelled to resort to mine owners any more than they are compelled to resort to the owners of wood, or turf, or even to the owners of grain, domestic animals, or to those owning any of the other ordinary necessaries or conveniences of life, which form a part of the commerce of the country. The owner of a coal mine is under no obligation to obtain a license from any public authority, and, therefore, when he chooses to mine his coal, he exercises no franchise. We are aware of no case wherein it has been held that the owner or operator of a coal mine stands on a different footing, as respects the control and sale of his property, than the owner or operator of any other kind of property in general demand by the public.

We are not unmindful that our constitution, in sect. 29, art. 4, enjoins legislation in the interest of miners; but this is solely as respects their personal safety—the enactment of police regulations to promote that end. It recognises that the business is dangerous to life and health, but it nowhere intimates that there is anything in it which disqualifies parties engaged in it from contracting as they may in regard to other matters, or that gives the public a use in it. There is, also, in sect. 5, art. 13, a provision requiring railroad companies to permit connections to be made with their tracks, so that coal banks or coal yards may be reached: but the same provision also applies to consignees of grain, and it affects the duty of the carrier alone, for no duty or obligation is enjoined on the owner of the coal bank or coal yard in that respect. We recognise fully the right of the General Assembly, subject to the paramount authority of Congress, to prescribe weights and measures, and to enforce their use in proper cases; but we do not think that the General Assembly has power to deny to persons in one kind of business the privilege to contract for labor and to sell their products without regard to weight, while at the same time allowing to persons in all other kinds of business this privilege, there being

nothing in the business itself to distinguish it in this respect from any other kind of business; and we deny that the burden can be imposed on any corporation or individual not acting under a license or by virtue of a franchise, of buying property and hiring labor merely to furnish public statistics, unless upon due compensation to be made therefor.

So far as the owner or operator of a mine shall contract for the mining of coal or the selling of coal by weight, we see no objection to the statute as imposing upon him the duty of procuring scales for that purpose. But we do not think that he can be compelled to make all his contracts in these respects to be regulated by weight, and when he has no necessity for the use of scales in these respects, he cannot, in our opinion, be compelled to keep and use them. We think the court erred in its ruling in giving the one and refusing the other instruction.

The judgment is reversed, and the cause remanded for further proceedings consistent with this opinion.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME JUDICIAL COURT OF MAINE.[2]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

SUPREME COURT OF NEW HAMPSHIRE.[5]

ACTION. See *Insurance; Slander.*

AGENT. See *Insurance.*

ASSIGNMENT.

Partial Assignment of Debt may be enforced in Equity—Assignment not in Fraud of Insolvent Law.—A. had made a contract to erect a school-house for the city of N., but became insolvent, and, in order to secure funds to enable him to complete his contract, made an assignment to C. of $600, which was a part of the sum to be due to him from the city of N. upon the completion of the school-house, and C. thereupon advanced him certain sums of money. *Held*, that the assignment was

[1] From Hon. N. L. Freeman, Reporter; to appear in 117 Ill. Rep.

[2] From Joseph W. Spaulding, Esq.; to appear in 78 Me. Rep.

[3] The cases will probably appear in 142 or 143 Mass. Rep

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 65 Md. Reports.

[5] The cases will probably appear in 64 or 65 N. H. Rep.